

## UNITED STATES DISTRICT COURT

FILED

FEB 15 2012

Northern District of Oklahoma

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

In the Matter of the Search of  
 (Briefly describe the property to be searched  
 or identify the person by name and address)

Apple iPhone, Model # A1349,  
 FCC ID: BCG-E2422B, EMC#: 2422

Case No. 12-mj-56-FHM

## APPLICATION FOR A SEARCH WARRANT

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property (identify the person or describe the property to be searched and give its location):

See Attachment "A": Apple iPhone, Model # A1349, FCC ID: BCG-E2422B, EMC#: 2422

located in the Northern District of Oklahoma, there is now concealed (identify the person or describe the property to be seized):

See Attachment "B"

The basis for the search under Fed. R. Crim. P. 41(c) is (check one or more):

evidence of a crime;

contraband, fruits of crime, or other items illegally possessed;

property designed for use, intended for use, or used in committing a crime;

a person to be arrested or a person who is unlawfully restrained.

The search is related to a violation of:

*Code Section*  
21 U.S.C. § 841(a)(1)

*Offense Description*  
Possession of Marijuana With Intent to Distribute

The application is based on these facts:

See Affidavit of Brian Comfort, attached hereto.

Continued on the attached sheet.

Delayed notice of \_\_\_\_\_ days (give exact ending date if more than 30 days: \_\_\_\_\_) is requested under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet.

*Brian J. Comfort*  
Applicant's signature

Brian Comfort, Task Force Officer

Printed name and title

Sworn to before me and signed in my presence.

Date: 2-15-12

City and state: Tulsa, Oklahoma

*Frank H. McCarthy*  
Judge's signature

U.S. Magistrate Judge Frank H. McCarthy

Printed name and title

**AFFIDAVIT**

Affiant, Brian L. Comfort, being duly sworn, deposes and states:

1. I am employed by the Tulsa Police Department. I have been employed by the Tulsa Police Department for approximately 25 years. I am currently assigned to the Special Investigations Division. I have been assigned to this division for approximately 12 years. The focus of this unit is the enforcement of Oklahoma state narcotics violations. In February of 2008, I was assigned to the DEA Tulsa Resident Office as a task force officer. I have received extensive training through the state of Oklahoma and the Drug Enforcement Administration in drug recognition, detection, methods of concealment, and am empowered to make arrests and seizures relating to those violations.

2. Through training and personal experience, I am aware that drug trafficking organizations maintain extensive contact with customers, couriers and suppliers. It is essential that organized drug trafficking organizations maintain contact with one another to effectively operate their organization. Organization members use many different means of communication to maintain contact with each other. Cell phones are often used by members to maintain contact with sources of supply as well as drug distributors. Additionally, I am aware that cellular and digital phones are often equipped in such a way so as to store, photos, messages, and notes along with call records showing recently dialed calls, calls received, stored numbers, and

stored text messages. I am aware that often these phones have contact lists including names and numbers. Further, that the stored material can be accessed via manipulation of the phone.

3. I have been investigating a large scale marijuana, cocaine, and methamphetamine distribution ring for the past three and a half years. The known members of the organization are residing in Tulsa Oklahoma, various areas of Texas, and Phoenix Arizona. On January 23, 2012, I received information from a confidential source (CS) in reference to a large load of marijuana coming to Tulsa. The CS stated that a Hispanic male was coming to Tulsa in a white Ford F350 with compartments on the back of it. The Hispanic male was going to meet another Hispanic male at the McDonalds parking lot at the corner of Pine Street and Peoria Avenue.

4. Investigators from the DEA Tulsa Resident Office and the Tulsa Police Department set up surveillance at the McDonalds on the afternoon of January 23, 2012. At approximately 2:51 pm, a white F350 with compartments pulled into the McDonalds. The truck was bearing Oklahoma license plate 950-HNL. The license plate checked to Jose Lopez at 120 N. Gillette Avenue. Investigators had arrested Alex Sosa Garcia on November 18, 2011 after he left that residence with approximately 20 pounds of marijuana. A search warrant on that date at that

address resulted in the seizure of 80 more pounds of marijuana. Garcia was subsequently indicted in the Northern District of Oklahoma.

5. At approximately 3:14 pm, investigators observed the truck exit the McDonalds parking lot, and drive south bound on U.S. Highway 75. The truck then proceeded east bound on I-244. The truck was stopped at 13500 E. I-244 for a speeding violation. Officers made contact with the driver, Juan Loya. He was very nervous and spilled the contents of his wallet. Loya produced a Mexican driver's license that was expired.

6. A K-9 was deployed to the scene, and arrived approximately 5 minutes after the traffic stop was initiated. The K-9 gave a positive alert to an odor of a controlled substance. A subsequent search of the vehicle resulted in the seizure of approximately 175 pounds of marijuana in the bed of the truck. Investigators also seized an Apple iphone in the cab of the truck. All evidence was turned into the Tulsa Police Department property room under property receipt # BF-9295.

7. Loya agreed to talk to investigators. He was read his Miranda rights in Spanish, and waived his rights. Officer Joe Gamboa provided interpretation, as he is certified to interpret in Spanish. Loya stated the following:

- Two weeks prior to his arrest, he was instructed to go to his residence in Odessa Texas, and pick up a cell phone. The phone had been left there by unknown persons. He was to call a particular phone number when he got the phone. He could not remember the phone number.

- After calling the number, Loya was picked up in Odessa, and driven to Presidio Texas to get his truck, the Ford F350 he was arrested in. He was then told where to pick up the marijuana and \$500 in gas and expense money.
- This is the second trip he has made to Tulsa to deliver marijuana. He was told to go to a wooded area near Presidio Texas and pick up the marijuana.
- Loya drove straight through to Tulsa, stopping to sleep in rest areas. He arrived in Tulsa on January 23, 2012 at approximately 3:00 am. He had been instructed to go to the McDonalds and wait for instructions.
- He waited all day in the parking lot, and never left the lot. He was contacted between 2:00 and 3:00 and told to drive east. A vehicle would flash lights at him, and he was to follow the vehicle to a ranch to deliver the marijuana.
- The only calls he made were to his ex-wife. The phone he was using to make contact with the supplier was left at Presidion Texas, at the direction of his supplier.

8. During the interview, Loya changed his story several times. The phone in the truck was used to talk to at least one person in the organization. Loya admitted he was contacted by someone when he was at the McDonalds.

9. Based on the foregoing, the Affiant believes that there is probable cause to believe that contained within the storage or memory of the cell phone identified in Attachment "A" are data and records regarding narcotic trafficking activity. Specifically, it is believed that phone has names and phone numbers of drug suppliers, customers, couriers and other known and unknown members of the

narcotic organization. It is further believed that the phone may contain electronic notes or messages that are relevant to the investigation of Juan Loya and others. These items are more fully set forth in Attachment "B".

Brian L. Comfort  
Brian Comfort, Special Agent  
Federal Bureau of Investigation DEA

Subscribed and sworn before me on this 15<sup>th</sup> day of February 2012.

Frank H. McCarthy  
Frank H. McCarthy  
United States Magistrate  
Northern District of Oklahoma

**ATTACHMENT "A"**

One gray and white Apple iPhone:

MODEL #: A1349

FCC ID: BCG-E2422B

EMC #: 2422

**ATTACHMENT "B"**

Electronic information containing, among other things, addresses, text messages, phone numbers, photographic images, and names of individuals or organizations.